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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/549,258  
Filing Date: July 27, 2006  
Appellant(s): PUGEL ET AL.

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Daniel E. Sragow  
For Appellant

**EXAMINER'S ANSWER**

1. This is in response to the appeal brief filed 06/08/2009 appealing from the Office action mailed 03/17/2009.

**(1) Real Party in Interest**

A statement identifying the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interference, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of the claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

2007/0256094	Pugel et al.	03-2004
2004/0017671	Rajendran et al.	07-2002
2006/0117340	Pavlovskaia et al.	05-2000
WO 02/25847	Zydonik	03-2002
2002/0062481	Slaney et al.	02-2001
2001/0044835	Schober et al.	05-2000
2004/0085143	Stoddard et al.	10-2002
2004/0163124	Basawapatna et al.	09-1999

**(9) Grounds of Rejection**

2. The following ground(s) of rejection are applicable to the appealed claims:

***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory

obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-30 of copending Application No. 10/549,259. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

**Regarding instant claim 1**, the co-pending application No. 10/549,259 of claim 1 teaches an apparatus, comprising: processing means for receiving broadcast signals and processing said received signals to generate analog signals without demodulating the received signals (Claim 1, lines 1-3); control means for enabling generation of said analog signals responsive to a request signal (Claim 1, lines 4-7); and wherein said analog signals are provided to a client device via a transmission medium connecting said apparatus and said client device (Claim 1, lines 5-7).

**Regarding instant claims 2 and 12**, the co-pending application No. 10/549,259

of claim 2 teaches an apparatus, wherein said transmission medium includes RG-59 cable.

**Regarding instant claims 5 and 15**, the co-pending application No. 10/549,259 of claim 1 teaches an apparatus, wherein: said control means detects an available frequency band on said transmission medium; and said available frequency band is used to provide said analog signals to said client device (Claim 1, lines 9-11).

**Regarding instant claims 6 and 16**, the co-pending application No. 10/549,259 of claim 5 teaches an apparatus, wherein said control means scans a plurality of frequency bands on said transmission medium to detect said available frequency band.

**Regarding instant claims 7 and 17**, the co-pending application No. 10/549,259 of claim 6 teaches an apparatus, wherein said control means detects said available frequency band based on a user input which selects said available frequency band.

**Regarding instant claims 10 and 20**, the co-pending application No. 10/549,259 of claim 1 teaches an apparatus, wherein said request signal is provided to said apparatus via said transmission medium (Claim 1, lines 5-7).

**Regarding instant claim 11**, the co-pending application No. 10/549,259 of claim 10 teaches a method for distributing signals from a gateway apparatus to a device (Claim 10, lines 1-2), comprising steps of: receiving broadcast signals (line 3); receiving a request signal from said device indicating a channel (lines 4-6); processing said received signals to generate analog signals corresponding to said channel responsive to said request signal, without demodulating said received signals (Claim 10, line 7); and providing said analog signals to said device via a transmission medium connecting

said gateway apparatus and said device (Claim 10, lines 11-12).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1,10,11, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rajendran et al. (US Pub. No. 2004/0017671) in view of Pavlovskaja et al. (US Pub. No. 2006/0117340).

**Regarding claim 1**, Rajendran teaches an apparatus/a method, comprising:

processing means for receiving satellite signals and processing said received signals to generate analog signals without demodulating the received signals  
*(Paragraph 0035: Antenna 101 may receive various signals transmitted from satellites, etc. The received signals may be provided to filter 110. Filter 110 may perform a corresponding transfer function to generate signals of the frequencies of interest. The generated signals are provided to LNA 120 in the form of analog signals), except for*

control means for enabling generation of said analog signals responsive to a request signal; and

wherein said analog signals are provided to a client device via a transmission medium Cable connecting said apparatus and said client device.

However, in related art, Pavlovskaja teaches control means for enabling generation of said analog signals responsive to a request signal (*Paragraphs 0053-0055, especially, paragraph. 0053, Pavlovskaja teaches the user may then select the enhanced content by pressing a request key and the set-top box will switch to the appropriate analog channel. Paragraph 0055, Pavlovskaja teaches FIG. 1F is a flow chart of the steps that are performed by the set-top box when a request is made for interactive content in a cable system that provides only one-way transmission of information content. A signal generated by a user input device is received by the set-top box. The set-top box responds by changing the tuner from the presently received channel to an interactive channel that has been assigned by the cable system. The set-top box then receives the corresponding analog signal for the interactive channel*); and

wherein said analog signals are provided to a client device via a transmission medium Cable connecting said apparatus and said client device (*Paragraph 0055, Pavlovskaja teaches FIG. 1F is a flow chart of the steps that are performed by the set-top box when a request is made for interactive content in a cable system that provides only one-way transmission of information content. A signal generated by a user input device is received by the set-top box. The set-top box responds by changing the tuner from the presently received channel to an interactive channel that has been assigned by*



*the cable system. The set-top box then receives the corresponding analog signal for the interactive channel).*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the above teaching of Pavlovskaja to Rajendran in order to view variety of programs.

**Regarding claims 10 and 20**, the combination of Rajendran and Pavlovskaja teach all the claimed elements in claim 1 and 11. In addition, Pavlovskaja teaches the apparatus/the method, wherein said request signal is provided to said apparatus (Figure 1, items 174,180,186) via said transmission medium (Figure 1, item 166).

**Regarding claim 11**, Pavlovskaja teaches a method for distributing signals from a gateway apparatus 146 to a device (Figure 1, items 174,180,186), comprising steps of:

receiving a request signal from said device indicating a channel (*Paragraphs 0053-0055, especially, paragraph 0053, Pavlovskaja teaches the user may then select the enhanced content by pressing a request key and the set-top box will switch to the appropriate analog channel. Paragraph 0055, Pavlovskaja teaches FIG. 1F is a flow chart of the steps that are performed by the set-top box when a request is made for interactive content in a cable system that provides only one-way transmission of information content. A signal generated by a user input device is received by the set-top box. The set-top box responds by changing the tuner from the presently received channel to an interactive channel that has been assigned by the cable system. The set-top box then receives the corresponding analog signal for the interactive channel*);

providing said analog signals to said device via a transmission medium connecting said gateway apparatus and said device (*Paragraph 0055, Pavlovskaja teaches FIG. 1F is a flow chart of the steps that are performed by the set-top box when a request is made for interactive content in a cable system that provides only one-way transmission of information content. A signal generated by a user input device is received by the set-top box. The set-top box responds by changing the tuner from the presently received channel to an interactive channel that has been assigned by the cable system. The set-top box then receives the corresponding analog signal for the interactive channel*), except for processing said received signals to generate analog signals corresponding to said channel responsive to said request signal, without demodulating said received signals.

However, in related art, Rajendran teaches processing said received signals to generate analog signals corresponding to said channel responsive to said request signal, without demodulating said received signals (*Paragraph 0035: Antenna 101 may receive various signals transmitted from satellites, etc. The received signals may be provided to filter 110. Filter 110 may perform a corresponding transfer function to generate signals of the frequencies of interest. The generated signals are provided to LNA 120 in the form of analog signals*).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the above teaching of Rajendran to Pavlovskaja in order to view variety of programs.

7. Claims 2 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rajendran et al. (US Pub. No. 2004/0017671) in view of Pavlovskaja et al. (US Pub. No. 2006/0117340) and further in view of Zydonik (WO 02/25847).

**Regarding claims 2 and 12**, the combination of Rajendran and Pavlovskaja fail to teach the apparatus/the method, wherein said transmission medium includes RG-59 cable.

However, in related art, Zydonik teaches the apparatus/the method, wherein said transmission medium includes RG-59 cable (Page 8, lines 3-13).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the above teaching of Zydonik to Rajendran and Pavlovskaja in order to transmit data/video to the set-top box.

8. Claims 5,6,15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rajendran et al. (US Pub. No. 2004/0017671) in view of Pavlovskaja et al. (US Pub. No. 2006/0117340) and further in view of Slaney et al. (US Pub. No. 2002/0062481).

**Regarding claims 5 and 15**, the combination of Rajendran and Pavlovskaja fail to teach the apparatus/the method, wherein:

said control means detects an available frequency band on said transmission medium; and

said available frequency band is used to provide said analog signals to said client device.

However, in related art, Slaney teaches the apparatus/the method, wherein:

said control means detects an available frequency band (available spectrum) on said transmission medium (*Paragraph 0028: Slaney teaches set top box 28 carries multiple channels and is conveyed to a tuner 48 which selects on frequency band out of the available spectrum or frequency*); and

said available frequency band is used to provide said analog signals to said client device (*Paragraph 0028: Slaney teaches a broadband analog signal (e.g., 680, 750, 860 MHz) received by the set top box 38 carries multiple channels (available frequency band)*)).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the above teaching of Slaney to Rajendran and Pavlovskaja in order to display various program for viewing.

Regarding claims 6 and 16, the combination of Rajendran, Pavlovskaja and Slaney teach all the claimed elements in claims 5 and 15. In addition, Slaney teaches the apparatus/the method, wherein said control means scans a plurality of frequency bands on said transmission medium to detect said available frequency band (*Paragraph 0028*).

9. Claims 7 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rajendran et al. (US Pub. No. 2004/0017671) in view of Pavlovskaja et al. (US Pub. No.

2006/0117340) in view of Slaney et al. (US Pub. No. 2002/0062481) and further in view of Schober et al. (US Pub. No. 2001/0044835).

**Regarding claims 7 and 17**, the combination of Rajendran, Pavlovskaja and Slaney fail to teach the apparatus/the method, wherein said control means detects said available frequency band based on a user input which selects said available frequency band.

However, in related art, Schober teaches the apparatus/the method, wherein said control means detects said available frequency band based on a user input which selects said available frequency band (Para. 0010).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the above teaching of Schober to Rajendran, Pavlovskaja and Slaney in order to select the content to be communicated the receiver.

10. Claims 3,8,9,13, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rajendran et al. (US Pub. No. 2004/0017671) in view of Pavlovskaja et al. (US Pub. No. 2006/0117340) and further in view of Stoddard et al. (US Patent Application Publication #2004/0085143).

**Regarding claims 3 and 13**, the combination of Rajendran and Pavlovskaja teach all the claimed elements in claim 1 and 11. In addition, Rajendran teaches the apparatus/the method, wherein said processing means includes:

Frequency-converting means for converting said received signals from

a first frequency band to a second frequency band to generate frequency converted signals (Paragraph 0039). Both fail to teach filtering means for filtering said frequency converted signals to generate said analog signals.

However, in related art, Stoddard teaches filtering means for filtering said frequency converted signals to generate said analog signals (Paragraph 0110).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the above teaching of Stoddard to Rajendran and Pavlovskaja, in order to receive clear picture by removing any noise from the signal.

Regarding claims 8 and 18, the combination of Rajendran and Pavlovskaja teach all the claimed elements in claims 5 and 15. In addition, Rajendran teaches the apparatus/the method, wherein said processing means comprises:

frequency converting mean for converting said received signals from a first frequency band to the available frequency band to generate frequency converted signals (Para. 0039). Both fail to teach filtering means for filtering said frequency converted signals to generate said analog signals.

However, in related art, Stoddard teaches filtering means for filtering said frequency converted signals to generate said analog signals (Paragraph 0110).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the above teaching of Stoddard to Rajendran and Pavlovskaja, in order to receive clear picture by removing any noise from the signal.

Regarding claims 9 and 19, the combination of Rajendran and Pavlovskaja teach all the claimed elements in claims 8 and 18. In addition, Rajendran teaches the

apparatus/the method, wherein said frequency converting means comprises a signal mixer (See Figure 1, element 150).

11. Claims 4 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rajendran et al. (US Pub. No. 2004/0017671) in view of Pavlovskaja et al. (US Pub. No. 2006/0117340) in view of Stoddard et al. (US Patent Application Publication #2004/0085143) and further in view of Basawapatna et al (US Patent Application Publication #2004/0163124).

**Regarding claims 4 and 14**, the combination of Rajendran, Pavlovskaja, and Stoddard teach all the claimed elements in claims 3 and 13, except for the apparatus/the method, wherein:

said first frequency band is greater than 1 GHz; and said second frequency band is less than 1 GHz.

However, in related art, Basawapatna teaches the apparatus, wherein:

said first frequency band is greater than 1 GHz; and said second frequency band is less than 1 GHz (Para. 0025).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the above teaching of Basawapatna to Rajendran, Pavlovskaja, and Stoddard, in order to encrypt the signals or scramble the signals so that only the paying subscribers will be able to descramble or de-encrypt the signals to view the program.

**(10) Response to Argument**

12. Appellant's arguments with respect to claims 1-20 have been fully considered but they are not persuasive.

Claims 1- 20

(A) The Appellant argued that nowhere does claim 1 of co-pending US Application 10/549,259 recite generating analog signals without demodulating received signal (Page 9, lines 1-16 of the Appellant argument).

In response to the argument (A), the examiner respectfully disagrees with the appellant's argument. In co-pending Application, Claim 1, lines 1-3, teaches processing means for receiving broadcast signals and processing said received signals to generate processed analog signals. Further, in abstract recites "the gateway apparatus includes signal processing elements for receiving signals from a broadcast source and processing the received signals to generate processed analog signals. A back channel demodulator receives a request signal from a client device via a coaxial cable connecting the gateway apparatus and the client device. That means there is no demodulator in the gateway apparatus and gateway apparatus receives broadcast signals and processing means processes received signal to generate processed analog signal without demodulating.



**(B)** The Appellant argued nowhere does Rajendran et al. show or suggest “processing means for receiving satellite signals and processing said received signals to generate analog signals without demodulating the received signals” (Page 9, line 21- page 10, line 5 of the Appellant argument).

**In response to the argument (B)**, the examiner respectfully disagrees with the appellant’s argument. In figure 1 and paragraph 0035, Rajendran teaches antenna 101 may receive various signals transmitted from satellites, etc. The received signals may be provided to filter 110. Filter 110 may perform a corresponding transfer function to generate signals of the frequencies of interest. The generated signals are provided to LNA 120 in the form of analog signals. By looking at the figure 1, there is no demodulator is shown anywhere near Filter 110 or LNA 120 or BPF 130 where the generated signals are provided to LNA 120 in the form of analog signals. So above paragraph obviously covers all the claimed limitations stated above in part **(B)**.

**(C)** The Appellant argued nowhere does Pavlovskaja et al. show or suggest “processing means for receiving satellite signals and processing said received signals to generate analog signals without demodulating the received signals” (Page 10, line 8-18 of the Appellant argument).

**In response to the argument (C)**, the examiner respectfully disagrees with the appellant’s argument. Those limitations are taught by Rajendran et al. but not Pavlovskaja et al. Pavlovskaja et al. teaches “control means for enabling generation of said analog signals responsive to a request signal, wherein said analog signals are

provided to a client device via a transmission medium Cable connecting said apparatus and said client device". For example, Pavlovskaja et al. Para. 0053, teaches the user may then select the enhanced content by pressing a request key and the set-top box will switch to the appropriate analog channel. Paragraph 0055, Pavlovskaja et al. teaches FIG. 1F is a flow chart of the steps that are performed by the set-top box when a request is made for interactive content in a cable system that provides only one-way transmission of information content. A signal generated by a user input device is received by the set-top box. The set-top box responds by changing the tuner from the presently received channel to an interactive channel that has been assigned by the cable system. The set-top box then receives the corresponding analog signal for the interactive channel. So package 145 in figure 1 of Rajendran et al. can be replaced with the figure 1C of Pavlovskaja et al. which is set up box 142C so that user may then select the enhanced content by pressing a request key and the set-top box will switch to the appropriate analog channel.

**(D)** The Appellant argued nowhere does Zydonik, Slaney et al., Schober et al., Stoddard, and Basawapatna show or suggest "processing means for receiving satellite signals and processing said received signals to generate analog signals without demodulating the received signals" (Page 10-14 of the Appellant argument).

**In response to the argument (D)**, the examiner respectfully disagrees with the appellant's argument. Those limitations are taught by Rajendran et al., but not Zydonik, Slaney et al., Schober et al., Stoddard, and Basawapatna. See part **(B)**, response to the

argument above for this argument. The examiner's response regarding claims 1 and 11 above applies equally to claims 2-10 and 12-20.

**(11) Related Proceeding(s) Appendix**

13. No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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